

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2011100437

I.G.,

Claimant,

v.

EASTERN LOS ANGELES
REGIONAL CENTER,

Service Agency.

DECISION

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on November 3, 2011, in Alhambra, California.

The mother of I.G. (Claimant) represented Claimant.¹ Claimant was not present.

Veronica Valenzuela, Supervisor, Individualized and Inclusive Supports Unit, represented the Eastern Los Angeles Regional Center (Service Agency).

The parties submitted the matter for decision on November 3, 2011.

STATEMENT OF THE CASE

The Service Agency contends that it must terminate its funding of music therapy for Claimant because it is a duplication of Claimant's current services, namely Social Emotional Development Intervention (SEDI).

Claimant contends music therapy and SEDI are not duplicative, she currently needs both services, and therefore, the Service Agency should continue to fund both.

¹ Initials identify Claimant and family title identifies her representative to preserve Claimant's privacy.

FACTUAL FINDINGS

1. The Service Agency served its notice of proposed action on or about September 1, 2011. It cited Welfare and Institutions Code sections 4646 and 4646.4 as the bases for its proposed termination.² The evidence did not establish the date Claimant requested a hearing; however, there was no argument that the hearing request was untimely. Therefore, Claimant's hearing request was deemed timely.

2. Claimant is a six-year-old girl with autism.

3. Claimant's current individual program plan (IPP), dated May 6, 2011, established that, due to her disability, she requires services to address her socialization deficits. Specifically, Claimant requires assistance staying calm and focused while processing sensory stimuli, demonstrating pleasure and enjoyment in social interactions, using gestures and verbal cues, playing appropriately, giving eye contact, engaging in novel or unfamiliar activities, and sustaining engagement in a preferred activity.

4. Based on these needs, the Service Agency agreed to fund both SEDI and music therapy. Pasadena Child Development Associates (PCDA) provides both services to Claimant. Claimant has received music therapy since approximately January 31, 2011. She has received SEDI since approximately July 2007.

5. On its website, PCDA defines music therapy as "the enhancement of human capabilities through the planned use of musical influences on human brain functioning. . . . Music therapists work individually with children and their caregivers using a variety of rhythm and music-based techniques to engage children with others in purposeful and functional activities. Music Therapy experiences involve children in singing, listening, moving, playing instruments, and creative activities creating a familiar musical environment that encourages positive interpersonal interaction" It is used to "enhance development in the areas of communication, cognition, motor skills, and social-emotional development."

6. Also on its website, PCDA defines SEDI as "emotional development, social development, interactive play, and/or social behavior which affect establishing relationships with family members and peers and achieving full inclusion in family and community activities." PCDA uses the Floortime™/DIR® model of service." According to PCDA, SEDI is "a philosophy that emphasizes the centrality of emotion (affect) to all development. Functional emotional development, building from one stage to the next, provides the foundation for other learning, including language, cognitive, social, play and motor skills."

7. According to Claimant's music therapy initial assessment by PCDA, dated March 9, 2011, music therapy was warranted to "facilitate increased motivation, interest, shared attention, pleasure and communication with others, and further strengthen her

² The Service Agency originally cited Welfare and Institutions Code section 4648.5, but withdrew its reliance on this statutory authority at hearing.

emotional development.” Her music therapy progress report, dated July 20, 2011, states that Claimant’s music goals were to “stay calm and focused while attending to sensory stimuli,” “demonstrate pleasure and enjoyment in interactions,” and “demonstrate anticipation.” Her on-going goals are to “demonstrate the ability to be comforted through trusted relationships,” “increase purposeful interactions with others,” and “demonstrate anticipation.”

8. Claimant’s most recent SEDI progress report, dated June 13, 2011, contains the following goals: “regard another person using eye contact to share attention with parents and grandmother . . . ,” “engage in an intensive activity with parents or grandmother . . . ,” and “increase the range of vocalization and emotions when engaged in social interactions with parent or familiar adult.”

9. Based on Claimant’s particular needs, the progress report goals of SEDI and music therapy, as well as the definitions of each, SEDI and music therapy provide similar services to Claimant. Both services meet similar needs of Claimant and have similar goals. SEDI and music therapy, as provided to Claimant, are duplicative.

10. On October 7, 2011, the parties met in an informal meeting, pursuant to Welfare and Institutions Code section 47XX.7. As a result, the Service Agency sustained its proposed termination.

11. At hearing, the Service Agency argued, among other things, that PCDA has used music to engage Claimant in SEDI therapy and uses the same Floortime™/DIR® model of service in SEDI therapy. Claimant’s mother argued that the use of music in SEDI is uncommon and that the use of the same model of service was due to the service provider’s overall service philosophy.

12. Claimant benefits from SEDI and music therapy each.

LEGAL CONCLUSIONS

1. As the Service Agency seeks to terminate an on-going service, it bears the burden of proof by a preponderance of the evidence. (Evid. Code, §§ 500, 115.)

2. Welfare and Institutions Code section 4646 states in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in

meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

3. Welfare and Institutions Code section 4646.4 states in part:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5 . . . the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

4. Welfare and Institutions Code section 4646.4 solely requires the Service Agency to establish an internal process that ensures adherence to federal and state laws and regulations, among other things. This internal process required by the Legislature cannot sustain the Service Agency's proposed termination. It is the state laws and regulations that the internal process must adhere to that can sustain the proposed action.

5. While the Service Agency cannot rely on Welfare and Institutions Code section 4646.4, it can successfully rely on Welfare and Institutions Code section 4646.

6. For Claimant, music therapy and SEDI are duplicative services. Both services seek to enhance Claimant's social-emotional development, increase her social communication, and develop meaningful social interactions with others. It is irrelevant that SEDI has used music with which to accomplish these goals and that PCDA uses a similar philosophy with both services. The question is whether the services have similar goals and seek to address the same needs. They do. Despite the fact that the Service Agency initially agreed to fund both services, the Service Agency may review its service provision to ensure the services are cost-effective. (Welf. & Inst. Code, § 4646, subd. (a).) Duplicative services are not cost-effective, and it is consequently appropriate to terminate services necessary to end the duplication. On this basis, the Service Agency's proposed action is allowable.

7. Cause exists to deny Claimant's appeal, as set forth in Factual Findings 1-12, and Legal Conclusions 1-6.

ORDER

Claimant's appeal is denied.

Dated: November 17, 2011

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. This Decision binds both parties. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.